



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 17, 1996

Ms. Georgia N. Crump  
Lloyd, Gosselink, Fowler, Blevins & Mathews, P.C.  
111 Congress Avenue, Suite 1800  
Austin, Texas 78701

OR96-0737

Dear Ms. Crump:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 39974.

The City of Bridgeport (the "city"), which you represent, received a request for information seeking all documents related to the city's purchase and use of water that Tarrant County Water Control and Improvement District No. 1 (the "district") sold to the city between May 1, 1988 to the present. You claim that the requested information is excepted from required public disclosure under section 552.103(a) of the Government Code.<sup>1</sup> You have submitted a representative sample of the documents responsive to the request for information.<sup>2</sup>

Section 552.103(a) of the Government Code excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

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<sup>1</sup> In your initial request for a decision to this office you also asserted that section 552.111 excepted some of the requested information from disclosure. You have subsequently informed our office that you no longer seek to withhold any of the submitted documents pursuant to section 552.111. We, therefore, do not address the applicability of section 552.111 here.

<sup>2</sup> In reaching our conclusion, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988).

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To show that section 552.103(a) is applicable, the city must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the city must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 (1989) at 5. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

In this instance, you state that "a dispute has arisen between the city and the district regarding the amount of raw water used by the city and billed by the district." You also state that the city received a memorandum from the district which demanded payment for "correct volume used" by the city. The district claimed that the city was underbilled in the past because of improper meter readings. Although there may be a genuine dispute about the water billing and payment, you have not shown that litigation is pending or that it is reasonably anticipated. You have not shown that litigation is realistically contemplated and is more than mere conjecture. The city has not met its burden under section 552.103. Consequently, the requested documents may not be withheld pursuant to section 552.103.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref.: ID# 39974

Enclosures: Submitted documents

Ms. Georgia N. Crump - 3

cc: Mr. Alan Thomas  
Assistant General Manager  
Tarrant County Water Control and  
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